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that throws into a bright light broad tracts on the sphere of good. To harden the parables into rules and the sayings into a canon of conduct is mistaken loyalty. It is to confuse intuition with that reflection about intuition which goes to make philosophy. It would imprison the seer in the pedant's *rôle*, and blur "the features of a conception, a life, a character, which the world might reverence more wisely, but can never love too well."<sup>42</sup>

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#### REFORM AND THE DEATH PENALTY.

John Bright, writing in 1865 to the secretary of the Howard Society on the subject of capital punishment, is reported to have said: "The cause of abolition is going on rapidly over Europe, and we, stupid as we are in these things, cannot stand still." These words suggest that even the famous tribune of the people had not measured the capacity of his fellow-countrymen for slowness in legislative reform. Bright and William Ewart, Romilly, Gurney and many others in the sixties, labored hard to impress upon the English people the need for reform in regard to the death sentence. The times were not propitious and their efforts afforded no immediate result.

The moral perceptions of the more enlightened members of a nation are always ahead of its criminal code. To effect a change means, in a democratic country, to first change the view of the average citizen. No easy task, for the average man is not only conservative in his views of moral problems but to his natural conservatism is added a heavy weight of indifferentism that has first to be overcome. Hence, the bringing of criminal law into line with modern day ethical standards is a phenomenally slow process. Of all examples, the most striking is that of the legal penalty of death for murder.

A lawyer, no friend to the abolition of capital punishment, has written: "The necessity for gradation of the crime of homi-

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<sup>42</sup>Sidgwick's Review of "Ecce Homo."

cide has been recognized for years by every judge of repute and by every student of the law."

In 1864 the question of reform was much discussed in England, and in that year Parliament appointed a Royal Commission to consider the subject. Two years later the Commission reported very strongly in favor of a system of gradation, abolishing death for crimes within the first grade, a minority report favoring complete abolition of the death penalty. But since then, that is, for nearly half a century, we have continued to pass sentences of death for homicidal crimes of various kinds, and no effort has been made by Parliament to effect the reform urgently recommended by its own commission. Truly, the Parliamentary mills grind very slowly indeed.

However, the last decade has witnessed a great growth in the humanitarian movement, in spite of much determined opposition. This movement has now become a vital part of our social life, showing itself in efforts not merely to ameliorate, but consciously to humanize, the life of the people in every direction. And it is to the impetus of this movement that we owe the fact that the question of hanging has again been pressed forward.

The Recorder of Newcastle recently urged that this question should now once more be brought before Parliament, and it is to this end that a short bill has been prepared<sup>1</sup> and will be introduced into the Commons at the first favorable opportunity. It would perhaps be out of place to speak here of this bill in detail. It suffices for my purpose to state that its two main points are the exclusion of women from the death penalty and the introduction of the principle of gradation as regards crimes of murder. I propose to offer a few considerations, based on some years of study of this question, which may assist in the formation of a definite public opinion.

Consider the hanging of a woman. It may be supposed that every man with a sense of justice and unbiased by sex

<sup>1</sup>By Dr. Josiah Oldfield, D. C. L., President of the Society for the Abolition of Capital Punishment.

antagonism, must feel that there is little moral excuse and much downright iniquity and stupid cruelty in such a proceeding. For in the first place, as to its justice, it is to be noted that no woman from first to last is allowed a say in the matter: the arresting, the trying and the judging, the passing of the sentence, the refusal to recommend mercy, the chaplain's ceremonial, the hanging and the burying, each item in the *via dolorosa* of the woman who slays her fellow-creature, is the deed of a man. And is not the very excuse given for refusing to women a part in the judging of crime, *viz.*, that women as compared with men are, by their very sex temperament, and physiological construction, less able to keep that evenness of mind from day to day and from week to week which it is essential for a judge to possess—is not that very fact, if true, one that would justify a differential treatment of the crime of murder by men and by women?

Moreover, there is the basic *sentiment* of sex to be considered—a sentiment, indeed, by no means to be despised. Whatever may be the right social and political relationship of men and women in a modern civilized state, let us admit that there is a treatment due to women from men which lies at the root of all chivalrous feeling, of all the higher kinds of social human life. We do not deny equality, if such be in question, because we maintain those more tender elements of life which the best type of man associates in a high sense with the society of women. He accords a treatment, partly out of respect for himself, which forbids, for example, the possibility of war upon women, and which makes an act of violence against a woman an outrage to be personally resented.

But there is another reason which would justify differentiation of treatment, and it is this: In a series of cases about to be quoted, every one may justly be put down to the morbid mental and physical conditions often resulting from childbirth, especially when taking place under unhappy circumstances. At such times many women are temporarily in a condition that no man, of course, is ever liable to be placed in.

The hanging of a woman by the judgment of men is not only an injustice—it is a disgrace to every consenting man,

a moral iniquity, leaving on the community the specially evil results which follow from the public degradation of a woman.

I suppose it is mainly because these hangings now take place within the prison walls, and not in public, that a civilized society is able to bear their continuance in the case of women with equanimity.

Murders committed by women are, with few exceptions, murders of children, mainly of infants. And where this is not the case they are but too often the result of sexual abuse on the part of men.

As illustrating the first type, I quote the following cases, which occurred in the British Isles during the last two years:

(a) Case of Susan Challis, a servant-girl, aged seventeen, sentenced to death at Strood in July, 1904, for strangling her infant.

(b) Case of Phœbe Turner, a servant-girl, aged eighteen, sentenced to seven years' penal servitude at the Kent Assizes in November, 1904, for causing the death of her infant by exposure. The girl was charged with murder, but the jury found her guilty of manslaughter, and so got rid of the death penalty.

(c) Case of Bella Brindin, at the Belfast Assizes in December, 1904. The following details are of pathetic interest in this case: "The child was born in Strabane Workhouse on July 11, and on August 6, a cold, wet day, mother and child were turned out. The mother crossed the river Mourne and walked twelve miles, reaching Cavandarragh about nine o'clock at night. She had been seen by persons with a bundle, which could only represent the child, but near the Townland she was seen coming from the direction of an old quarry-hole without any bundle. Next morning the body of the child was found in the water in the quarry-hole. Counsel said the jury might probably think that great pity should be extended to the accused, who, without a friend, turned even out of the workhouse, passed over that long journey of twelve weary miles carrying the child. She was without shelter or an atom of food, was soaked with rain, and had in the end probably reached that condition of desperation which deprived her of

that maternal instinct which she shared in common with the lower animals."<sup>1</sup>

(d) Case of Gertrude Dyte, sentenced to death at Taunton, January, 1906, for the murder of her infant on the previous December 6th.

(e) Case of Beatrice Noble, an artist's wife, tried in March, 1906, for killing her child in Normandy.

Consider also the tragedy of the following case from St. Gall, one of the few cantons of Switzerland still retaining the death penalty:

"Frida Keller, lâchement violée, malgré ses résistances, par son patron qui la guettait depuis longtemps, accouchait en 1899 d'un garçon, à la maternité de St. Gall. Le père de l'enfant, après avoir promis d'assurer son entretien manqua à sa parole et quitta la ville peu de temps après. Repoussée par son propre père, écrasée sous l'impossibilité d'assurer pécuniairement la vie de l'enfant, obsédée toujours plus par l'idée fixe de garder à tout prix le secret d'une maternité inacceptée qui lui faisait horreur, elle est bientôt hantée par la seule solution possible qui germe lentement dans son cerveau troublé: la suppression de l'enfant. Elle lutte longtemps pour chasser cette hantise qui s'affirme et devient bientôt une résolution.

"Au tribunal, tous les témoignages sont en sa faveur: elle était douce, bonne, intelligente, économique et de bonne conduite. Elle aimait les enfants de sa sœur. Elle ne nie nullement la prémeditation.

"L'article 133 est appliqué.

"C'est la mort.

"A la sentence, elle tombe sans connaissance en poussant un cri.

"Les gardes l'emmènent."

Two cases will suffice to illustrate the other type referred to, one English, the other German:

(a) Case of Kitty Byron, a girl of twenty-four, sentenced to death in December, 1902, for the murder of the man with whom she was living, a brute and a drunkard, whose treatment of the girl was so bad that even the judge remarked, "Everyone must sympathize with the accused."

(b) Case of a woman named Zillman. I quote a report which appeared in the *Daily News*, October 31, 1893: "Today, for the first time for many years, a woman was beheaded in Germany. The prisoner had murdered her husband by

<sup>1</sup> *Daily News*, Dec. 7, 1904.

<sup>2</sup> *Signal de Genève*, Nov. 26, 1904.

poisoning him, after he had brutally ill-treated her and her children. At the trial the woman said she would reserve her defense; but she was sentenced to death, and the Emperor confirmed the sentence. Yesterday the woman was informed that she was to die. She had hoped to be pardoned, and burst into tears. She was yesterday taken to Plötzensee, where the execution took place. There she asked for coffee and a well-done beefsteak, saying, "I should like to eat as much as I like once more." To the chaplain the woman declared her innocence to the last moment. In the night she spoke continually of her miserable married life, and of her five children. This morning, however, she was quite apathetic while being prepared for the execution. Her dress was cut out at the neck down to the shoulders, and her hair fastened up in a knot, her shoulders being then covered with a shawl. At eight the inspector of the prison entered Zillmann's cell and found her completely prostrate, and not capable of putting one foot before the other. Two warders raised her up and led her to the block. Without a sound she removed the shawl from her shoulders, and three minutes after eight the executioner had done his work."

It may perhaps be argued from the fact that since, in the English cases quoted above, the women were not hanged, it is evident that we have reached a point when, as regards women at any rate, the law has ceased to be operative. The actual letter of the law, it may be said, is of little import, if the practice be just and humane. I submit that this is an error. Within the last decade several women have been hanged in England, one of the worst cases being that of the half-idiot girl, Mary Ansell. And should a murder of a similar kind occur to-morrow, what is to prevent a stiff-necked Home Secretary from taking the same line as the one then taken? Public opinion, or rather official opinion, is in such matters at much the same level in England and in America. If Governor Bell of Vermont could insist, as was the case last December, upon hanging a girl of nineteen for the murder of her husband, what is to prevent a similar act from taking place in England, if the same view of right and justice be held by some future

Home Secretary? Governor Bell, in deciding the fate of the unhappy Mary Rogers, is reported to have said, "There is one law for women and men."<sup>3</sup> A very untrue statement, as has already been shown.

This girl had been through marriage, childbirth, the loss of her child, and separation from her husband; and, wishing to marry a man whom we may suppose she loved, connived at her husband's murder. Here, then, is a whole tragedy of womanhood, of motherhood and wifehood in a girl not out of teens; and the whole matter, with all its physiological and psychological bearings, is roughly and rapidly settled, as is supposed, by a dozen men, drawn at random, listening to the matters of fact and then deciding that the girl's neck must be broken. "She has had a fair trial," says the State governor; "there is one law for women and for men."

Put thus boldly, the ugly thing has no moral basis at all. On what ground of ethics can such an act be defended? In cold blood and with deliberate intent this murdereress is murdered, for, as Alfred Russel Wallace has said, "The quality of deliberate intention, which we always consider an aggravation of the crime of homicide, pertains in the highest degree to our action in taking the life of any criminal."<sup>4</sup> And who is the gainer by such an execution in any moral or social sense? Not, certainly, the unhappy woman thus hurried out of life and given no chance of repaying the fearful debt she has incurred to society. And not society, for what community ever gained by scorning the sanctity of life in any one of its members? The plea of deterrency<sup>5</sup> often urged, has a hundred

<sup>3</sup> *Daily Mail*, Dec. 9, 1905.

<sup>4</sup> Leaflet 2. Society for the Abolition of Capital Punishment.

<sup>5</sup> The falsity of the plea of the deterrent effect of capital punishment was illustrated by a French case last August of an instructive kind. A double execution took place at Dunkirk of two Belgians named Van den Bogaert and Swartewagher. These two ruffians had committed robbery and murder; deliberate murder that is, for the purpose of a burglary. There was no passion or hatred of an individual in their crime. If the fear of the death penalty had any effect, why did they not transfer the execution of their plot some few kilometers to the east, over the Belgian border, where their necks would have been safe?

times been shown to be false, and no one who considers seriously the circumstances of these crimes will put forward such a plea. Not, again, the person murdered in the first instance, for nought can be gained to the dead by a repetition of the crime of homicide. And not Justice, for two homicides do not cancel each other. Justice and social polity require that the criminal shall suffer to just the amount sufficient to make him sensible of the wrong done to the individual and to the community and to be reformative in nature, so that the doer of wrong may be restored to society, a member healthy in body, mind and soul. That, at least I take to be the moral basis of punishment. We must first be sure the wrongdoer is made conscious of his wrongdoing, and then, for the public weal, every effort must be made to reform him.

But it is just when brought down to this simple ethical basis that capital punishment completely fails. It is true enough that many of those who are hanged are emotionally acted upon by chaplains and others, and said to confess their crime and repent; and we hear from time to time of murderers dying confident of being shortly in heaven. But what evidence have we of, and in fact what time or environment is there for, the development of any real consciousness of the wrong done by the murderer against the community? And obviously death provides no outlet for the undoing of the wrong. Such a consciousness would, in the majority of murder cases, be the product of the continuous pressure of reformative elements, educative, social and moral, such as the right kind of penal institution might be expected to offer. And out of such a consciousness would grow an effective desire for reform, and thence a healthy condition of mind and soul that would restore the criminal to the community.

I turn now to the other proposal in the bill to be brought before Parliament, *viz.*, the grading of murder crimes. According to a report before me, Ohio has recently abolished capital punishment for murder in the first degree except for a second offense. That is practically what this bill suggests, what was recommended by the Commission of 1864. It is surely wanting in all justice and common sense that all homi-

cides coming technically within the range of wilful murder should receive the same indiscriminating sentence, and that in other homicides not technically murder the sentence should, at the discretion of the judge, vary from binding over to come up for judgment if called upon, to seven, ten or twenty years' penal servitude. What sense, what morality was there in passing the same sentence in each of the following cases, all of quite recent date?<sup>6</sup>

(a) Walter Pobble, September, 1905, for the murder of his two children. Described as a sober, industrious man, out of work for a long period. The case was described as a "tragedy of poverty."

(b) George Butler, October, 1905, for the brutal murder of a woman.

(c) Marion Seddon, October, 1905, an old woman of sixty-five, who, in dire poverty, took poison with her aged husband. The man died and the woman, recovering, was tried for aiding and abetting the murder of her husband.

(d) Frank Hansford, November, 1905, a mentally deficient lad of seventeen, for the murder of his sister, apparently done in passion.

(e) Henry Perkins, November, 1905, for a murder in a common lodging-house.

(f) Christopher Lenihan, December, 1905, for the brutal murder of a young woman in Ireland.

(g) Gertrude Dyte, January, 1906, for the murder of her illegitimate infant.

(h) John Griffiths, February, 1906, a lad of nineteen, for the murder of a girl of seventeen.

(i) Percy Murray, February, 1906, for the murder of his employer in a struggle.

These nine cases are about one third of those which occurred in the British Isles during the six months from September, 1905, to February, 1906. I select them because they illustrate some of the enormously varying types of homicide,

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<sup>6</sup> Extracted from the Register of the Society for the Abolition of Capital Punishment.

technically murder, all of them, therefore, involving the same penalty of death. The following four cases, in which the juries, in spite of the charge of wilful murder, gave verdicts of homicide, technically manslaughter, occurred during the same period. I quote them as showing the enormous variation in the sentences that may be given the moment the verdict is on the other side of the arbitrary line between murder and manslaughter.

(a) Richard Cosgriff, February, 1906, for killing his wife with a scaffold axe while drunk. Sentence, fifteen months' hard labor.

(b) William Beavan, March, 1906, for killing his wife at Newport. Sentence, penal servitude for life.

(c) Henry Dowdle, March, 1906, for killing his wife, while drunk. Sentence, seven years' imprisonment.

(d) Henry Stacey, March, 1906, for killing another man under great provocation. Sentence, three years' penal servitude.

It is to be particularly noted that these were not manslaughter, but murder charges, in which the juries chose to find verdicts of manslaughter, thus setting the judge free to pass such a sentence as in his opinion met the nature of each case. Of the inequality of sentences passed by different judges for practically the same offense I say nothing here, as it is not the question in point. I cite these cases in order to point out that, had the juries chosen to call these homicides murder, no variation in sentence would have been possible. In the cases of murder given above, the old woman, the boy, the young mother, the brute, the man in desperate misery, and the man in a passion all received the same unintelligent sentence.

Does the demand for gradation need a further plea? If any think so, I point to the fact that we have now arrived at a stage when the only present solution of these murder cases consonant with public sentiment is for the Home Secretary to treat some half of the sentences as merely ceremonial, and in their places to substitute sentences of his own making—a remarkable position for the most important of our criminal

laws. Thus, out of the nine death sentences given above, the Home Secretary set aside no less than six, substituting in one case three months' imprisonment and in the other five indeterminate sentences of penal servitude. And thus autocratic, administrative action takes the place of law. No one in any civilized country, I suppose, would wish to see the prerogative of mercy set aside. Without it we should be unable to right those cases of injustice which will occur, however carefully, morally and humanely the law be constructed and applied. Such cases there will be, and provision must be made for them. But no one can contend that these cases of murder are exceptional. They occur every month in regular succession, and in nine out of every ten we have the same public agitation, petitions signed by thousands, re-trial of the case in the local press, and final arbitrary decision of the politician in office for the time being. Such a process is, I submit, entirely opposed to every ideal conception of the law, its majesty and its dignity, its moral worth and its existence as a sane standard of justice within the community. Such a process destroys public respect and leads to that worst form of government—arbitrary action based on sentimentalism, without sense, without intelligent reason, and without certainty.

The stumbling-block is, of course, the survival of the old and barbarous penalty of death. While we retain this penalty within the criminal code the same difficulties must crop up, the same disbelief in the sureness of the law must survive, the same agitation and arbitrary acts.

But whether or no the time has arrived when we can completely abolish capital punishment, it has surely come when these ceremonial, sham sentences should be abolished, and, by the adoption of a reasonably graded law, the judge be given power, as with all other offenses, to pass a sentence for the crime of murder having some relationship to the case before him.

Whether penal servitude, as at present carried out, is any fit punishment, morally and socially, for murder, or indeed for any other crime, I am not prepared to say. I very much doubt it, and am inclined to believe that the only reasonable

form of punishment lies in the direction of what is known as the "indeterminate sentence." But this raises a large and somewhat complicated question of penology, and one that applies not only to murder but to all crime.

The question for the moment is the abolition of that illogical, unjust and impracticable distinction which, while considering each manslaughter case on its own merits, insists on continuing to pass the same sentence for every kind of murder —a sentence which in every other case cannot be carried out.

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### THE RUSSIAN REVOLUTION.\*

In Russia we see an extraordinary phenomenon. The justification of government is, of course, that it serves the people. It may come from the people or it may be imposed on them; its justification is the same, that it guides, directs, helps, serves. In Russia, on the other hand, we see a government that has become a great machine, working largely on its own account; its relations to the people are mainly to draw sustenance from them; it does not so much help them as make an enormous load on their backs; it exists principally to maintain itself, to extend itself, to enrich itself; it is like a foreign substance in the body politic, not the head and brain and nerves of that body, as a government normally is.

Undoubtedly the Russian government was not altogether this at the start, else it could hardly have got started. In three ways it served: it was a means of defense against the foreigner (principally Tartar or Turk); it broke the power of an ancient landed aristocracy; and it established the rude beginnings of civil order (protecting in some measure life and property). Probably by means like these it secured its remarkable hold on the reverence, even the affection and confidence, of the peasants, who, aside from the nobility (old and new) and government officials, practically *were* the people.

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\* An Address given before the Society for Ethical Culture of Chicago.